



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: The MAXIMA Corporation
File: B-222313.6
Date: January 2, 1987

DIGEST

Amendment explaining solicitation requirement need not be issued to an offeror no longer in the competitive range where the subject matter of the amendment is unrelated to the technical reasons for which the offeror was excluded from the competition.

DECISION

The MAXIMA Corporation protests the award of a contract to COMSIS Corporation under request for proposals (RFP) No. 86-019, issued by the Department of Education (Education) for the operation of the National Clearinghouse for Bilingual Education. MAXIMA contends that Education failed to furnish it essential information regarding a solicitation requirement that on-line computer searches be free of charge to clearinghouse users. We deny the protest.

MAXIMA's proposal was excluded from the competitive range as unacceptable because: (1) MAXIMA had little previous experience with the bilingual community and did not demonstrate the capacity to work with the intended users of the clearinghouse; (2) MAXIMA's proposed staff did not have the required experience or background; (3) MAXIMA did not include procedures and a schedule for the transfer of clearinghouse activities as required by the RFP; (4) MAXIMA did not describe plans and procedures for database development; and (5) contrary to the intent of the RFP, MAXIMA's proposal was oriented more to research than to the actual users of the clearinghouse. Education then notified MAXIMA in writing that its proposal had been determined to be outside the competitive range, stating only that the reason was the proposal's weaknesses in technical quality, conceptualization, personnel, organization and management, and facilities and equipment.

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Thereafter, Education conducted written and oral negotiations with the offerors it had found to be within the competitive range. During that time, the offerors were given a site visit to the clearinghouse facility to observe the condition of its collected resources and its basic operations. Afterwards, Education issued an amendment to the RFP to confirm in writing all the information that Education had provided during oral negotiations and the site visit. This amendment primarily provided information about the experience of the clearinghouse operation and about the facility's files, databases, and materials. In addition, the amendment clarified an RFP requirement that on-line computer searches be free of charge to users to explain that this included telephone charges as well as charges for actual computer access.

After evaluating the best and final offers submitted by the offerors in the competitive range, Education determined that COMSIS' proposal represented the combination of technical merit and cost most favorable to the government. Accordingly, an award of the contract was made to that company.

MAXIMA alleges that it learned of the contents of the RFP amendment for the first time at a debriefing held by the agency approximately 1 month after award. According to MAXIMA, Education officials informed the company that the approach used in its proposal regarding on-line searches -- improperly would have caused users to incur costs in the form of telephone charges; MAXIMA alleges that it had interpreted the RFP requirement as being limited to no cost for the actual access to the clearinghouse computers. MAXIMA charges that the Education officials implied at the debriefing that had MAXIMA interpreted this requirement consistent with the RFP amendment, its proposed approach would have been acceptable.

Education argues that MAXIMA's protest rests entirely on an erroneous belief that its proposal would have been evaluated as acceptable had MAXIMA been aware of what the agency intended in specifying that on-line computer searches be performed at no cost to the user. We agree.

The record establishes that the RFP amendment as it pertains to Education's clarification concerning user charges for on-line computer searches was a minor cost matter unrelated to the major technical deficiencies for which MAXIMA was excluded from the competitive range. We have held that an agency need not issue a solicitation amendment to an offeror no longer in the competitive range where the subject matter

of the amendment is not directly related to the reasons the agency had for excluding the offeror from the competitive range. Amperif Corp., B-211992, Apr. 11, 1984, 84-1 C.P.D. ¶ 409. As to MAXIMA's inference from the debriefing that its proposal would have been acceptable had MAXIMA clarified the proposal in accordance with the amendment, it is apparent that Education officials only meant that MAXIMA's approach to providing on-line computer searches would have been acceptable, not that the company's proposal would have been technically acceptable overall.

Finally, MAXIMA complains that at the debriefing Education did not detail the technical grounds for excluding the firm from the competitive range that the agency has highlighted in response to the protest.

MAXIMA's complaint does not provide a basis on which to object to Education's rejection of the firm's offer and award to COMSIS. First, MAXIMA was notified by letter nearly 2 months before the debriefing that its proposal had serious technical deficiencies. While the letter did not provide precise details as to why MAXIMA's proposal was found to be technically deficient, the letter did set forth the general areas of technical weaknesses; certainly, MAXIMA had enough information from the agency's letter that it could have asked at the debriefing for further details as to why its proposal was considered technically deficient. More importantly, MAXIMA, having been made aware of Education's precise view through the protest, has furnished no argument at all to rebut the agency's findings with respect to the acceptability of its offer, so that we have no reason to question Education's conclusion that the offer was technically unacceptable.

The protest is denied.

for Seymour Efron
Harry R. Van Cleve
General Counsel